

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT CHARLES GILMAN, &
MARILYN TERESE TOTZKAY-GILMAN,
Ex. Rel. UNITED STATES OF AMERICA,

Plaintiffs,

Case No. 1:07-CV-1031

v.

Hon. Robert J. Jonker

ROBERT A. TROTT., et al.,

Defendants.

ORDER

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 20) filed on July 30, 2008. On August 8, 2008, Defendants filed an objection to the Report and Recommendation. (docket # 21.) Plaintiffs have not objected to the Report and Recommendation.

In the Sixth Circuit, if a party does not timely object to a Report and Recommendation then that party waives appellate review of the district court's adoption of the magistrate's recommendation. *Thomas v. Arn*, 474 U.S. 140, 147–48 (1985). If, however, a party does object to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

In this case, Magistrate Judge Brenneman recommended, among other things, that the Court grant Defendants' motion to dismiss. Plaintiffs have not objected to that recommendation. Accordingly, this action is dismissed and Plaintiffs have waived their right to appellate review of the dismissal. The dismissal of this action renders Defendants' motion to quash service—and their objection regarding that motion—moot.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed July 30, 2008 (docket # 20), is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that:

1. Plaintiffs' motion for summary judgment (docket # 3) is **DENIED**;
2. Plaintiffs' requests for default judgment (docket ## 4, 15) are **DENIED**;
3. Defendants' motion to dismiss (docket # 7) is **GRANTED**; and
4. Defendants' motion to quash service (docket # 5) are **DENIED AS MOOT**.

Dated: August 28, 2008

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE